



REO SALES

After the Foreclosure the Lender now owns.

Bayou Title, Inc.


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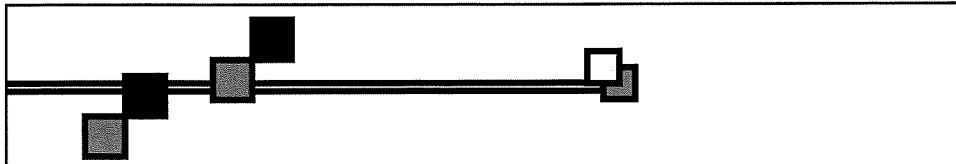


Foreclosure Concerns:

- Procedurally Correct?
- All Encumbrances Cancelled?


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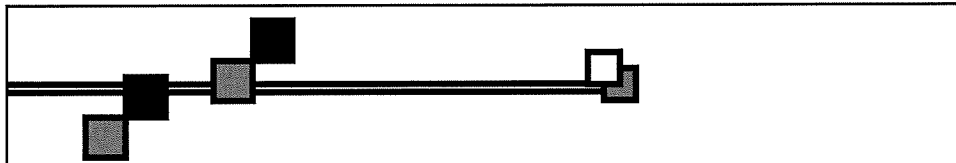


Procedurally Correct?

- Mennonite Notice to Inferior Creditors
- Service on Defendants
- Absent Defendant = Curator
- Deceased Debtor
 - Owned alone?
 - Owned with spouse?
 - Succession opened?


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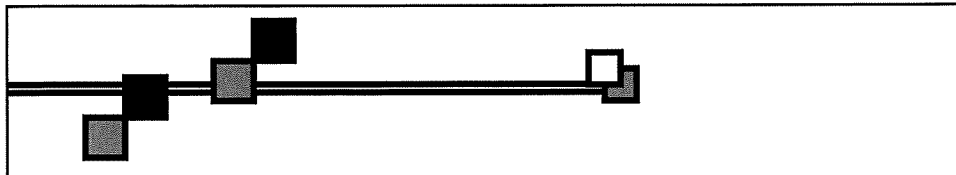


Procedurally Correct?

- Mennonite Notice to Inferior Creditors:
 - Inferior lienholders must get notice
 - Gives them the right to "protect" their balance
 - IRS has special notice requirements (25 day notice and 120 day redemptive period)
 - Lack of notice takes one year to cure


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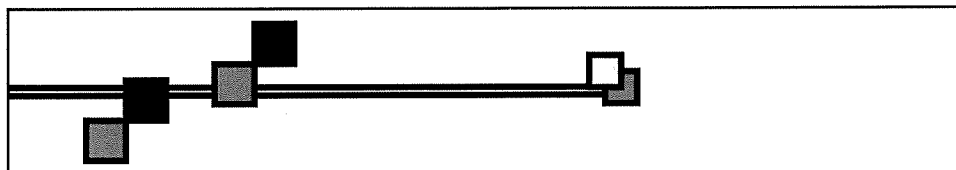


Procedurally Correct?

- Service on Defendants:
 - Could be personal service
 - Could be domiciliary service
 - Could be served only once with an alert that it is the debtor's responsibility to keep tabs on when the sheriff sale is going to happen
 - Lack of service is a constitutional "due process" issue


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Procedurally Correct?

- Service on Tenants:
 - Tenant occupied?
 - 90-day notice to vacate
 - If not sure if tenant or owner occupies, safe answer is 90-days


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Procedurally Correct?

- Merchantability vs. Insurability:
 - They are not the same!
 - Industry is leaning towards insurability even though the contracts have historically provided for merchantability


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All Encumbrances Cancelled?

- The sheriff will cancel all liens, either fully or partially, that affect the property, provided they appear on the mortgage certificates
- Not everything that should appear on the mortgage certificates does

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All Encumbrances Cancelled?

- Encumbrance/lien of foreclosing creditor will always be cancelled by sheriff
- Writ of Seizure will also always be cancelled, unless the creditor abbreviated the process, by taking the property directly (dation, deed in lieu) without paying the sheriff and/or attorney their fees and cost

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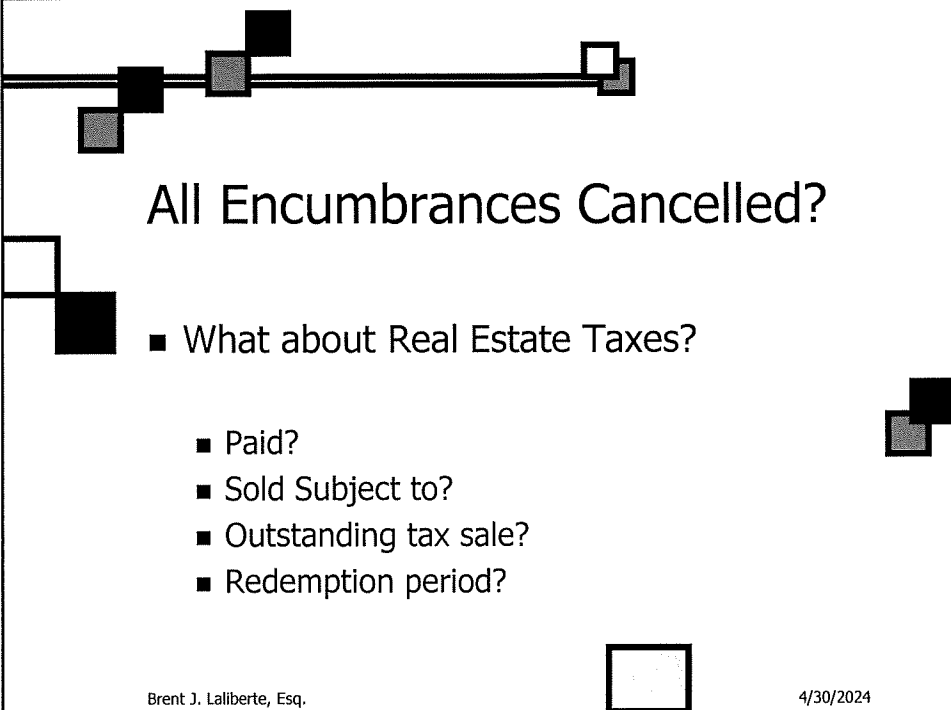
All Encumbrances Cancelled?

- Open Writ of Seizure takes ten (10) years to prescribe
- Orleans Parish Sheriff's Office will treat a first and second mortgage filed on the same date (before July 1, 2006) as of "equal rank"
- Need to file "Rule to Rank"

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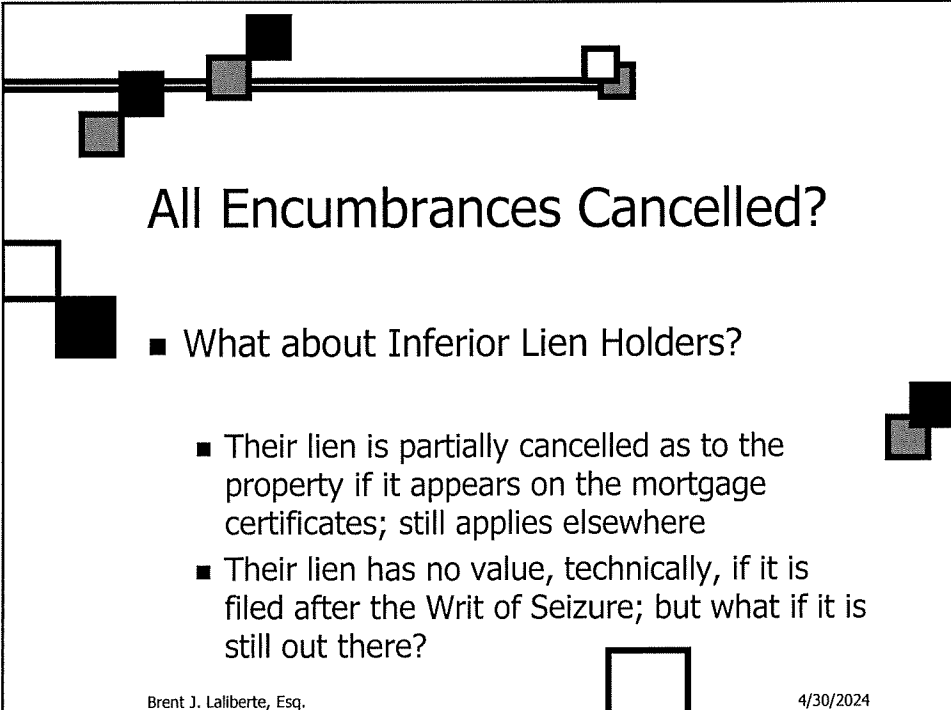


All Encumbrances Cancelled?

- What about Real Estate Taxes?
 - Paid?
 - Sold Subject to?
 - Outstanding tax sale?
 - Redemption period?


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All Encumbrances Cancelled?

- What about Inferior Lien Holders?
 - Their lien is partially cancelled as to the property if it appears on the mortgage certificates; still applies elsewhere
 - Their lien has no value, technically, if it is filed after the Writ of Seizure; but what if it is still out there?

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All Encumbrances Cancelled?

- Anything filed subsequent to the writ of seizure is supposed to have no value, from a legal standpoint
- But don't you want it off of the title?
- Condo and homeowner association dues are a perfect example; plus there are future implications- - -are dues current?

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Merchantability vs. Insurability

- Always, always, always get owner's title insurance on an REO sale
- Realize that a foreclosing attorney who doesn't handle things procedurally correct may issue a policy, but that does not satisfy merchantability
- Having a "second set of eyes" isn't bad

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Merchantability vs. Insurability

- There are a lot of really good foreclosing attorneys out there
- There are some that are not as good
- “Marching orders” sometime come from underwriter regarding “insurability”
- Merchantability argument may get left behind

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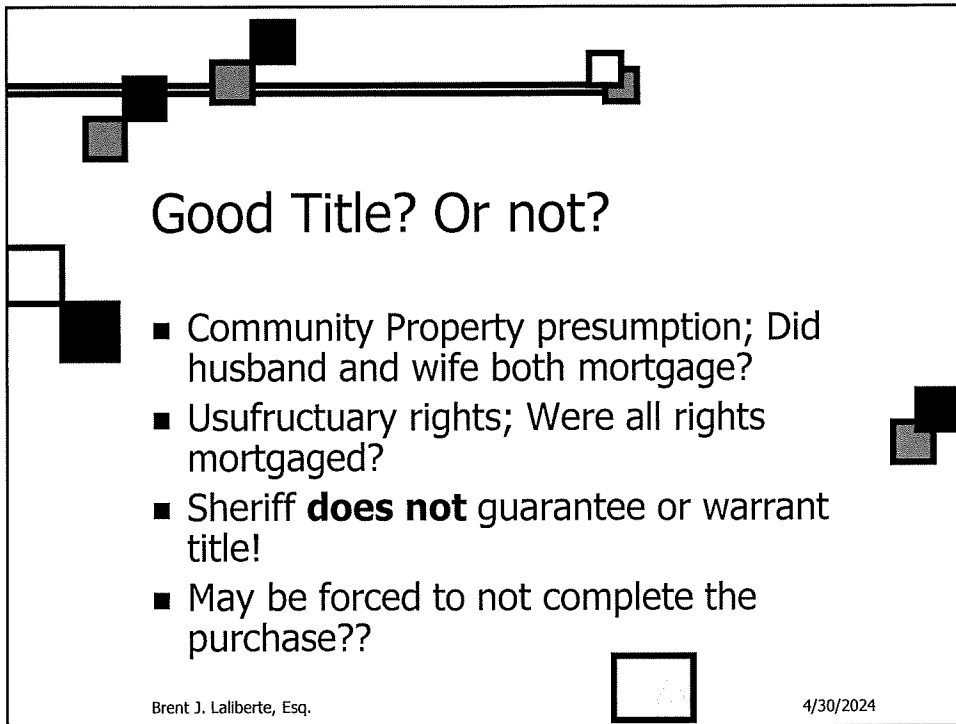
Good Title? Or not?

- REO Lender or 3rd party bidder only gets the same “title” that was held by the prior owner, and which was subject to the mortgage that was foreclosed upon
- A foreclosure of a mortgage on 75% of a property will yield a new owner of 75% of the property
- Partition suit may then ensue

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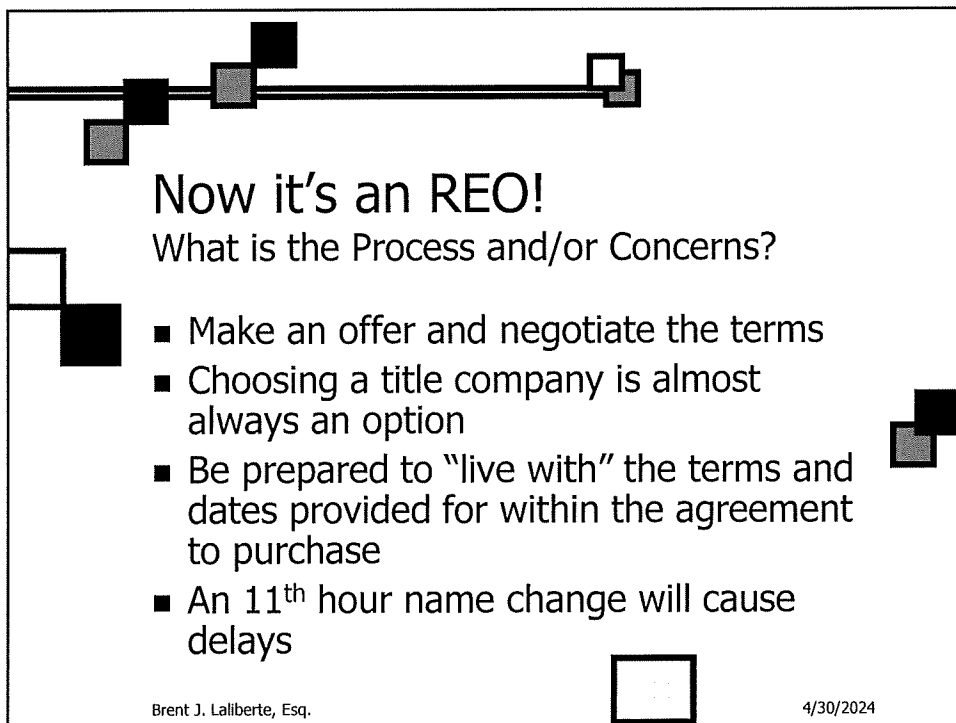


Good Title? Or not?

- Community Property presumption; Did husband and wife both mortgage?
- Usufructuary rights; Were all rights mortgaged?
- Sheriff **does not** guarantee or warrant title!
- May be forced to not complete the purchase??

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Now it's an REO!

What is the Process and/or Concerns?

- Make an offer and negotiate the terms
- Choosing a title company is almost always an option
- Be prepared to "live with" the terms and dates provided for within the agreement to purchase
- An 11th hour name change will cause delays


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Now it's an REO!
What is the Process and/or Concerns?

- Additional time needed to close by your client (extensions) will cost them money
- But, if REO Seller needs more time, you have to wait- -without compensation!
- What if Seller delays put Purchaser's loan, rate lock, moving timetable at risk?


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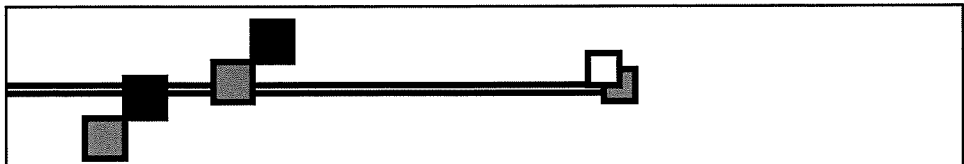


Now it's an REO!
What is the Process and/or Concerns?

- Always get a title search and owner's title insurance
- REO Seller will often agree to pay for owner's title insurance if you close with their chosen company
- Who's watching your back?

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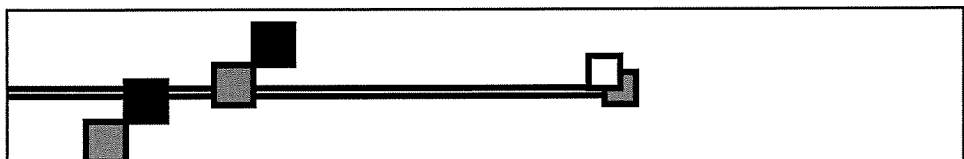
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What is the Process and/or Concerns?

- Pre-existing title problems and/or faulty foreclosure procedures may not be detected, or disclosed, by REO Seller's chosen title company
- Why?
- It's called Insurability!

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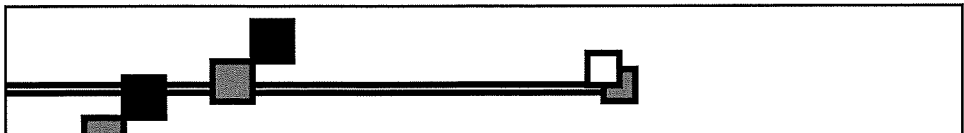
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What is the Process and/or Concerns?

- Out-of-town title company. . .
 - often times gets tax proration wrong
 - often times forgets about Orleans Parish documentary transaction tax; typically a Seller charge, but not on government REOs; \$325 could become \$850+!
 - often times doesn't understand Louisiana law (community property, intervention, etc.)

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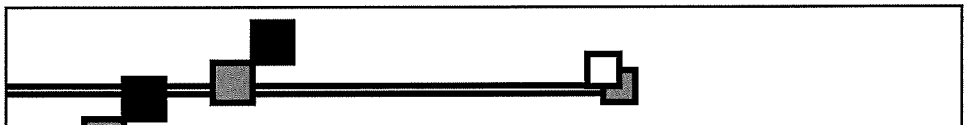
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What is the Process and/or Concerns?

- Out-of-town title company. . .
 - Will not "run" a buyer's name on a Cash Sale to see if title should instead be taken in a different name
 - A Buyer with a judgment or lien against them will have that item immediately attach to the new property
 - Subsequent sale or refi now requires that the creditor be dealt with (i.e. paid money)

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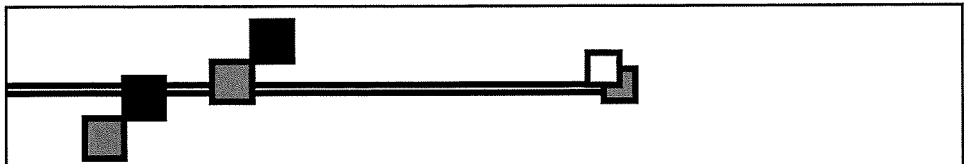
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What is the Process and/or Concerns?

- We are starting to receive a chorus of Agents who say. . .
 - "I am going to tell my client that having the Seller agree to pay the owner's title insurance premium is not worth us closing with their title company!"
- Why?
 - Too many problems!
 - Notary on wheels

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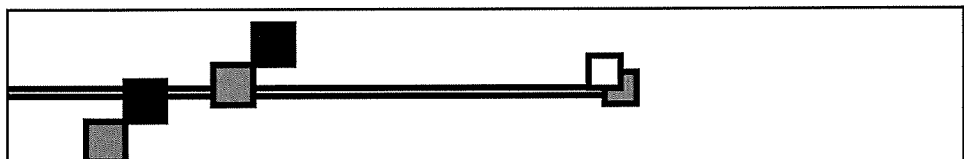
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What is the Process and/or Concerns?

- Sheriff's Deed and Subsequent Transfers:
 - Sheriff's Deed showing REO Seller as owner may not even be filed yet; Costs not paid?
 - Transfer from foreclosing creditor to FNMA, FHA, VA, or another lender may not be recorded yet
 - Seller can't sell if they don't own!

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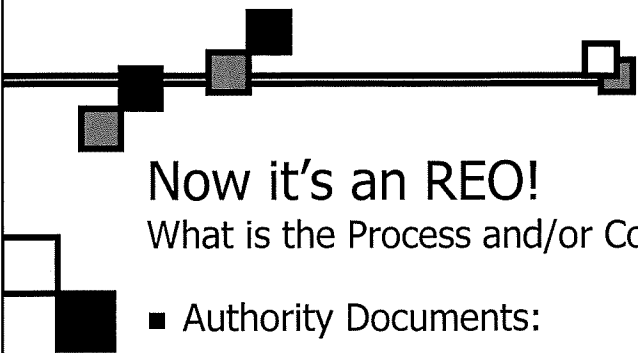
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What is the Process and/or Concerns?

- Sheriff's Deed and Subsequent Transfers:
 - Usually resolved somewhat quickly
 - But, what if there is a problem?
 - Appraisals, inspections, rate locks, etc. may be money wasted if deal cannot close, or cannot close on time

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Now it's an REO!

What is the Process and/or Concerns?

- Authority Documents:
- Who has the right to sign on behalf of REO Seller, and did the signatory on the prior "Subsequent Transfer" have authority?
- Resolution? POA? Both? Trust? Pool?

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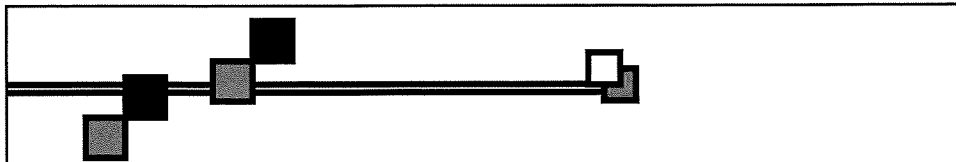
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What is the Process and/or Concerns?

- Seller Paid Fees:
 - Some "junk fees" are paid by REO Sellers
 - VA won't pay any
 - May be part of closing costs provided for within the purchase agreement

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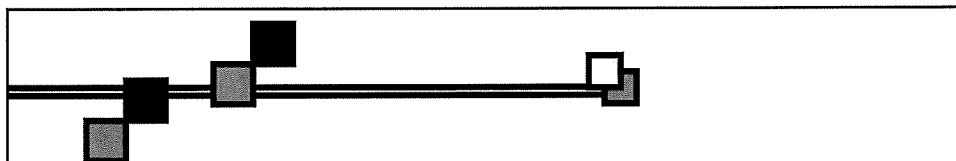
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What is the Process and/or Concerns?

- Asset Management Companies:
 - Some are connected with, or are a part of, foreclosing firms; others are not
 - AMC employees are often times "bonus-driven" to close "x" number of deals, or "x" number of deals by "y" date
 - Could be motivation, or deterrent; depending

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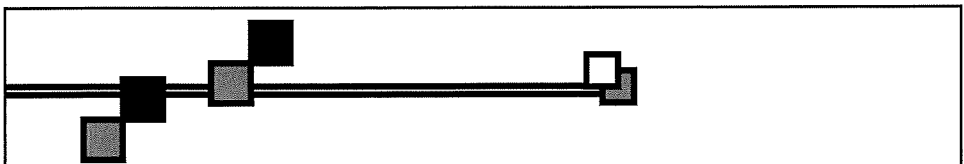
Now it's an REO!

What is the Process and/or Concerns?

- Required Repairs:
 - Small repairs are usually paid for by Listing Agent, and later reimbursed
 - Large repairs usually require three (3) bids
 - Some repairs (A/C units) are at risk if installed too early due to vulnerability of an empty house; could affect timing of closing


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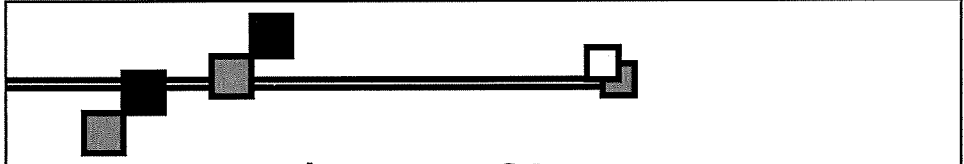


Now it's an REO!
What is the Process and/or Concerns?

- Homeowner/Condo Dues:
 - Delinquent dues owed prior to the sheriff's sale are uncollectible, by law
 - Dues that come due subsequent to a Creditor taking ownership at sheriff's are due
 - Dation and deed in lieu does not wipe out prior dues


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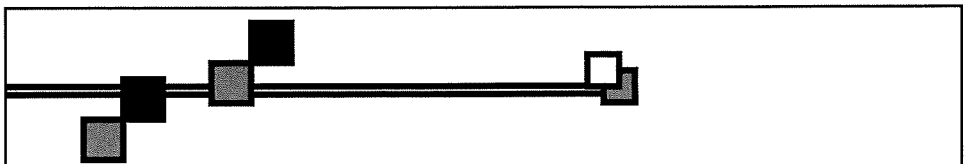


Now it's an REO!
What is the Process and/or Concerns?

- Homeowner/Condo Dues:
 - Dues being "uncollectible" may upset an HOA or Condo Association
 - Dialogue needs to occur, as we need to find out what is legally due and collectible
 - Title policies will take exception to prior dues

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Now it's an REO!

What is the Process and/or Concerns?

- Subsequent Re-Sale Restrictions:
 - Fannie Mae (FNMA) adds a "no sale/transfer" clause to its warranty deed to restrict re-sale for 90 days
 - Restrictions apply to a subsequent sale for an amount higher than the "amount determined" by Fannie Mae
 - Flip vs. Flop

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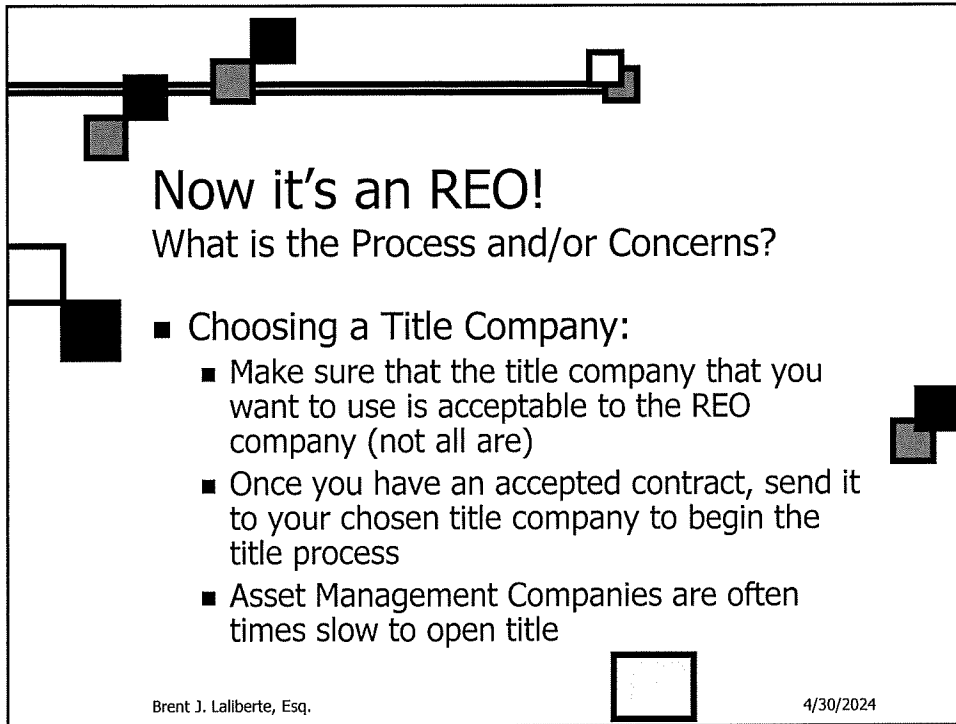
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What is the Process and/or Concerns?

- Subsequent Re-Sale Restrictions:
 - Countrywide also used to provide for a "no sale/transfer" clause in its deeds, but only for 30 days
 - These restrictions will be listed as an exception on the title policy
 - Usually not real onerous

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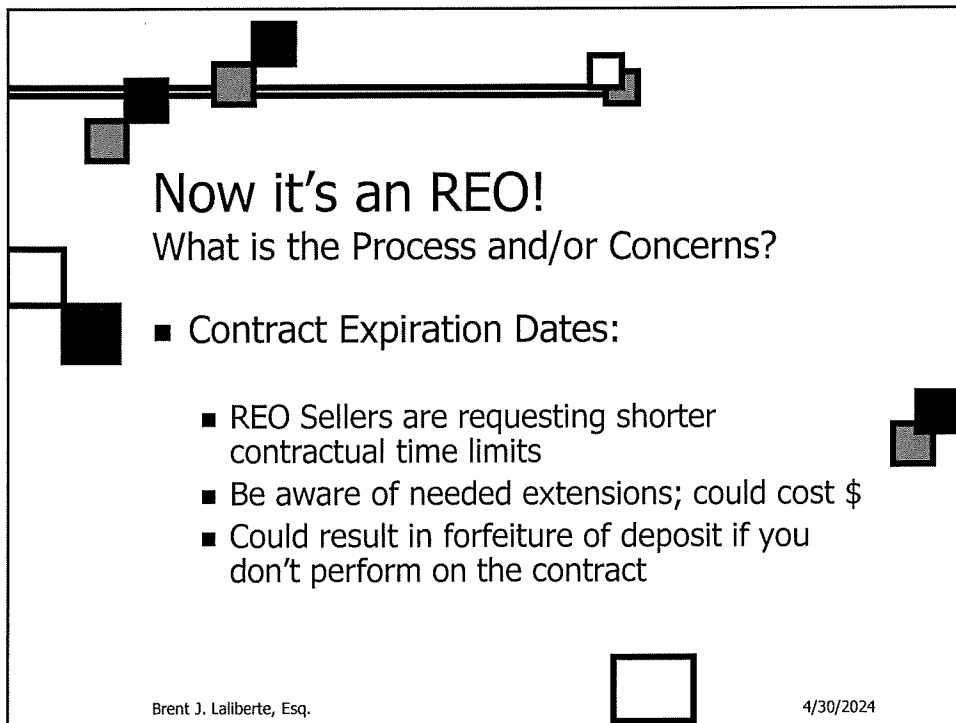
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What is the Process and/or Concerns?

- Choosing a Title Company:
 - Make sure that the title company that you want to use is acceptable to the REO company (not all are)
 - Once you have an accepted contract, send it to your chosen title company to begin the title process
 - Asset Management Companies are often times slow to open title

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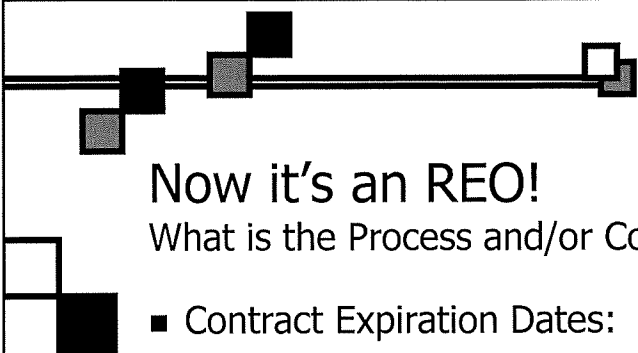
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What is the Process and/or Concerns?

- Contract Expiration Dates:
 - REO Sellers are requesting shorter contractual time limits
 - Be aware of needed extensions; could cost \$
 - Could result in forfeiture of deposit if you don't perform on the contract

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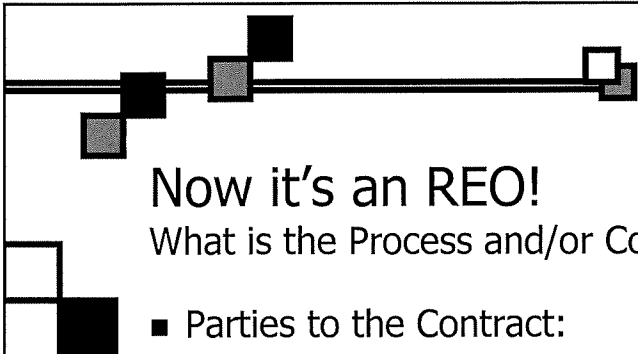
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What is the Process and/or Concerns?

- Contract Expiration Dates:
 - HUD-1 Settlement Statements usually require 48 hour approval by FNMA, etc.
 - Becomes difficult if everyone is trying to close at the end of the month and the lender will not issue closing instructions in advance

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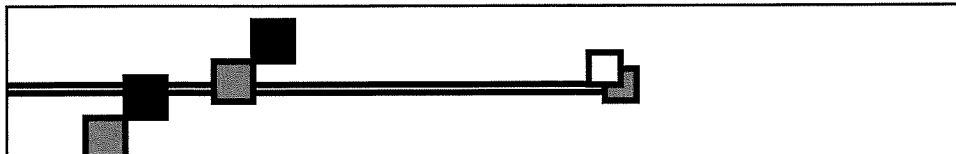
Now it's an REO!

What is the Process and/or Concerns?

- Parties to the Contract:
 - Make sure that **all** parties, and the **correct** parties, execute the Agreement to Purchase
 - Subsequent assignment, addition of a spouse, acquisition by an LLC requires Seller approval
 - This takes time

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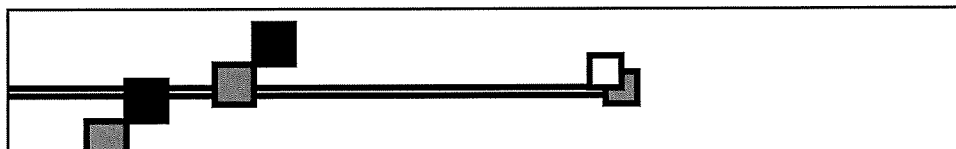
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What is the Process and/or Concerns?

- Who is the Realtor's BFF?
- The title company. . .

BAYOU TITLE!


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Now it's an REO!
What is the Process and/or Concerns?

- Why Bayou Title?
 - We do 30 to 40 REO Sales per month, and that number is increasing!
 - Asset Management Companies and foreclosing firms know who we are, and the quality of work that we deliver

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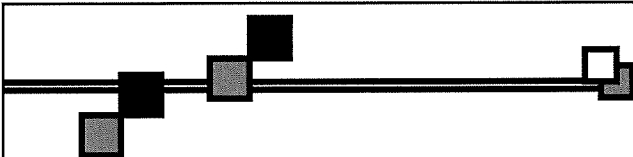
Now it's an REO!

What is the Process and/or Concerns?

- Why Bayou Title?
 - We have offices throughout the Eastbank, Westbank and Northshore areas, and we also close "personally" as far west as Lafayette, and throughout the Baton Rouge, Houma and Thibodaux areas
 - For You, Near You . . . BAYOU!


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Remember. . .

- We strive for merchantability, and not just insurability!
- We protect your client's interest, which means we protect yours as well!
- We have your back!

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